

**Amendment to section 17 of the Offences Against  
Property (Enforcement of Hudood) Ordinance, 1979.**

**Report No. 133**

**Working Paper for amendments in section 17 of the Offences Against Property (Enforcement of *Hudood*) Ordinance, 1979  
Ordinance No. VI of 1979**

The Offences Against Property (Enforcement of *Hudood*) Ordinance, 1979 was promulgated to bring the law relating to certain offences against property in conformity with the injunctions of Islam. Clause (a) of section 2 of the Ordinance, *ibid* provides the definition of adult and section 15 of the Ordinance, *ibid* provides the definition of *Haraabah*. Clause (a) of section 2 and section 15 of the Ordinance, *ibid* reads as under:

**Section 2 (a)**“Adult” means a person who has attained the age of eighteen years or puberty.

**Section 15:** When any one or more persons, whether equipped with arms or not, make show of force for the purpose of taking away the property of another and attack him or cause wrongful restraint or put him in fear of death or hurt, such person or persons are said to commit *haraabah*.

Sub-section (1) of section 17 of the Ordinance, 1979 provides the punishment of *haraabah* upto thirty stripes of whipping with rigorous imprisonment until the Court is satisfied of his being sincerely penitent and proviso to this sub-section says that Court can award three years sentence of imprisonment. Sub-section (1) of section 17 of the Ordinance, *ibid* reads as under.

17.\_\_(1) Whoever, being an adult, is guilty of *haraabah* in the course of which neither any murder has been committed nor any property has been taken away shall be punished with whipping not exceeding thirty stripes and with rigorous imprisonment until the Court is satisfied of his being sincerely penitent;

Provided that the sentence of imprisonment shall in no case be less than three years.

A perusal of sub-section (1) of section 17 of the Offences Against Property (Enforcement of *Hudood*) Ordinance, 1979, reveals that the Courts are empowered to award punishment of whipping to the offender of *haraabah* upto thirty stripes and rigorous imprisonment until the Court is satisfied of his being sincerely penitent. The proviso, to sub-section (1) of section 17 *ibid* empowers the Courts to award fixed

sentence of imprisonment of three years also. It may be pointed out that sub-section (1) of section 17 of the Ordinance is silent in providing benefit to the accused in case after the conviction, the accused is sincerely penitent. Likewise no mechanism is available for the satisfaction of the Court to believe that the penitence of the accused is genuine and it is liable to be considered sympathetically. So this issue needs to be addressed by providing specific punishment for the offence of *haraabah* under sub-section (1) of section 17 of the Ordinance.

After enactment of the Abolition of the Punishment of Whipping Act, 1996 the sentence of Whipping under any law, rule or regulation for the time being in force stands abolished, except in cases where the punishment of whipping is provided for as "hadd" therefore, punishment of whipping as provided in sub-section (1) of section 17 is required to be omitted while proposing other amendment therein. Section 3 of the Act *ibid* is as under:

Section 3. Abolition of punishment of whipping.--- Except in cases where the punishment of whipping is provided for as had, the sentence of whipping provided under any law, rule or regulation for the time being in force shall stand abolished.

In view of the above, certain amendments were proposed in the sub-section (1) of section 17 of the Offences Against Property (Enforcement of *Hudood*) Ordinance, 1979 and placed below the Sub-Committee. The Sub-Committee examined the proposal and approved the same. A comparative table of existing provision, proposed and approved by the Sub-Committee is as follows:

### **Comparative Table.**

<b>Existing Provision</b>	<b>Proposed Amendments by the Secretariat of Law and Justice Commission</b>	<b>Recommendation of the Sub-Committee</b>
17.__(1) Whoever, being an adult, is guilty of <i>haraabah</i> in the course of which neither any murder has been committed nor any property has been taken away shall be punished <u>with whipping not exceeding thirty stripes and with rigorous imprisonment until the Court is satisfied of his being</u>	17. Whoever, being an adult, is guilty of <i>haraabah</i> in the course of which neither any murder has been committed nor any property has been taken away shall be punished <b>with imprisonment which may extend to three years.</b>	The Sub-committee was pleased to approve the proposal.

sincerely penitent:

Provided that the sentence of imprisonment shall in no case be less than three years.

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.....To be omitted.....  
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**The Commission's deliberations on 14<sup>th</sup> June, 2014.**

The Commission was informed that sub-section (1) of section 17 of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 provides punishment for the offence of Harrabah upto thirty stripes of whipping with imprisonment not less than three years until the court is satisfied of his being sincerely penitent. After enactment of the Abolition of the Punishment of Whipping Act, 1996, the sentence of whipping stood abolished except in cases where it is provided as a Hadd. Therefore, the punishment of whipping provided in section 17(1) may be omitted and the sentence of maximum imprisonment be fixed up to three years as the person charged under the section had neither committed murder nor caused loss to the property. The Commission considered the proposal and approved the same.

Draft Bill for amendment in sub-section (1) of section 17 of the Offences against Property (Enforcement of Hudood) Ordinance, 1979 is hereby annexed.

**A****Bill**

further to amend the Offences Against Property (Enforcement of Hudood) Ordinance, 1979

**Whereas** it is expedient further to amend the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VI of 1979) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

**1. Short title and commencement.** (1) This Act may be called the Offences Against Property (Enforcement of Hudood) (Amendment) Act, 2014.

(2) It shall come into force at once.

**2. Amendment to Section 17.**--- In the Offences Against Property (Enforcement of Hudood) Ordinance, 1979, in sub-section (1) of section 17,--

(a) for the words “with whipping not exceeding thirty stripes and with rigorous imprisonment until the Court is satisfied of his being sincerely penitent” the words “with imprisonment which may extend to three years” shall be substituted; and

(b) the proviso shall be omitted.